



FEDERAL ELECTION COMMISSION
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MEMORANDUM

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AUDIT REFERRAL #03-06

SUBJECT: Republican Party of Arkansas – Referral Matters

On June 30, 2003, the Commission approved the Final Audit Report on the Republican Party of Arkansas (RPA). The report was released to the public on July 9, 2003. It should be noted the RPA did not respond to the Interim Audit Report. Therefore, all the findings from the report are being referred to your office.

All workpapers and related documentation are available for review in the Audit Division. Should you have any questions regarding this matter, please contact Gary Hache or Marty Favin at 694-1200.

Attachment:

- Final Audit Report, Part IV, Findings and Recommendations, pages 6 – 27

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Part IV

Findings and Recommendations

The following findings were discussed with the RPA's representative at the exit conference. Appropriate workpapers and supporting schedules were provided. The representative did not respond to any of the issues.

The IAR was forwarded to the RPA for response on May 16, 2003. The Audit staff contacted counsel for the committee and verified receipt of the report. The response was due on June 18, 2003. The RPA did not respond to any of the findings and recommendations contained in the IAR.

Finding 1. Misstatement of Financial Activity

Summary

The Audit staff found that the RPA had misstated receipts, disbursements and cash-on-hand balances for calendar years 1999 and 2000, with both receipts and disbursements being overstated by more than 50% in calendar year 2000. The Audit staff recommended that the RPA file amended reports to correct the reporting differences.

Legal Standard

Each report must disclose:

- The amount of cash on hand at the beginning and end of the reporting period;
 - The total amount of receipts for the reporting period and for the calendar year; and
 - The total amount of disbursements for the reporting period and for the calendar year.
- 2 U.S.C. §434(b)(1), (2) and (4).

Facts and Analysis

The following chart details the discrepancies between the totals on the RPA's disclosure reports and bank records. These discrepancies are primarily the result of the RPA reporting joint federal and non-federal activity³ that did not pass through the federal allocation or any other federal bank account. The chart lists: (a) the amounts the RPA reported, (b) the actual amounts listed on its bank statements, and (c) the differences between the two amounts. Succeeding paragraphs explain why the discrepancies occurred.

Comparison of Disclosure Reports and Bank Records

1999 Activity			
	Reported	Bank Records ⁴	Discrepancy
Opening Cash Balance	\$ 36,965	\$ 37,561	\$ 596 Understated

³ The RPA established, but did not always use, an Allocation account to pay for shared federal and non-federal activity.

⁴ Net of interaccount transfers.

Receipts	\$ 377,445	\$ 298,857	\$ 78,588 Overstated
Disbursements	\$ 320,985	\$ 306,709	\$ 14,276 Overstated
Ending Cash Balance	\$ 93,426	\$ 29,710	\$ 63,716 Overstated

2000 Activity			
	Reported	Bank Records	Discrepancy
Opening Cash Balance	\$ 34,916	\$ 29,710	\$ 5,206 Overstated
Receipts	\$ 2,593,239	\$ 1,684,371	\$ 908,868 Overstated
Disbursements	\$ 2,547,432	\$ 1,672,441	\$ 874,991 Overstated
Ending Cash Balance	\$ 184,807	\$ 41,639	\$ 143,168 Overstated

Explanation of Discrepancies

Opening Cash on Hand – 1999

The \$596 understatement of the opening cash balance was the result of the RPA not filing corrected Summary and Detailed Summary Pages as detailed in the 1998 final audit report, approved on December 7, 2000.

Receipts – 1999

The overstatement of receipts was the net result of the following:

• Non-reportable interaccount transfer reported on Schedule H-3 (Transfers from Non-Federal Accounts)	+ \$	750
• Reported transfers from non-federal account not found in federal account	+	1,400
• Unreported receipt from affiliated committee	-	6,500
• Reported receipts deposited into non-federal account	+	7,175
• Over-reported receipts on disclosure reports (net) ⁵	+	75,223
• Unexplained difference	+	540
• Net overstatement	+	<u>\$ 78,588</u>

Disbursements – 1999

The overstatement of disbursements was the net result of the following:

• Disbursements reported twice	+ \$	14,442
• Reported disbursements that did not clear federal accounts	+	1,783
• Unreported bank fees	-	218

⁵ The Audit staff reconciled receipts by report period. Total deposits into the federal accounts were compared to reported receipts (as adjusted for identified reconciling items) to determine the over/under reported receipts. Receipts were under-reported by \$5,383 at mid-year and over-reported by \$80,606 at year-end. This discrepancy may have been an attempt by the committee to compensate for other reporting irregularities.

• Unreported disbursements	-	1,131
• Unreported transfer to non-federal account	-	600
• Net overstatement	+	<u>\$ 14,276</u>

Closing Cash on Hand – 1999

The \$63,716 overstatement of the closing cash on hand was the net result of the misstatements described above.

Opening Cash on Hand – 2000

The overstatement of the opening cash on hand was the net result of the following:

• Misstatement of 1999 year end cash	+	\$ 63,716
• Reporting error: January 1, 2000 beginning cash on hand ⁶	-	58,510
• Net overstatement	+	<u>\$ 5,206</u>

Receipts – 2000

The overstatement of receipts was the net result of the following:

• Error between amount reported and amount deposited in bank	+	\$ 2,000
• Receipt reported twice	+	2,000
• Non-reportable interaccount transfer reported on Schedule H-3	+	11,750
• Reported receipts deposited into non-federal account	+	23,750
• Reported transfers from non-federal account with no record of receipt in federal allocation account	+	619,581
• Unreported receipts from:		
○ Authorized candidate committees	-	65,050
○ Transfers from non-federal account	-	23,493
○ Transfers from affiliate committees	-	269,724
○ Other Political committees	-	15,000
• Over-reported receipts on disclosure reports (net) ⁷	+	622,752
• Unexplained difference	+	302
• Net overstatement	+	<u>\$ 908,868</u>

Disbursements – 2000

The overstatement of disbursements was the net result of the following:

• Math errors resulting in understatement	-	\$ 1,525
• Math errors resulting in overstatement	+	6,377
• Error between amount reported and clearing bank	+	2,100
• Disbursements reported twice	+	34,699
• Reported disbursements that did not clear federal accounts	+	5,138
• Non-reportable interaccount transfer reported as a disbursement to a vendor	+	11,750
• Reported disbursements paid from non-federal account	+	12,600

⁶ The RPA filed an amendment to the year-end 1999 ending cash but did not file an amendment to conform the beginning cash at January 1, 2000.

⁷ See Footnote 5. The majority (\$603,366) of the over-reporting occurred in the 30 day Post-General reporting period.

• Reported non-federal portion of shared activity on Schedule H-4 that was paid directly from non-federal account (See Finding 8)	+ 1,174,824 ⁸
• Unreported disbursements	- 369,138 ⁸
• Unexplained difference	- 1,071
• Net overstatement	+ \$ 874,991

Closing Cash on Hand – 2000

The \$143,168 overstatement of the closing cash on hand was the net result of the misstatements described above and a \$104,084 overstatement of the opening cash on hand for the 30 day Post-General report because of an amendment to the ending cash on hand for the prior reporting period that was not carried forward to the next reporting period.

Interim Audit Report Recommendations

The Audit staff recommended that the RPA file amended reports, by reporting period, for calendar years 1999 and 2000. The amended reports should have included:

- Corrected Summary and Detailed Summary Pages for each period to accurately disclose the committee's financial activity; and
- Amended Schedules A, B, H-3 and H-4, for each period to support the corrected Summary and Detailed Summary Pages. The schedules should have included memo entries to report the activity paid directly from the non-federal account that should have been paid from the federal accounts.

Finding 2. Receipt of Contributions that Exceed Limits

Summary

The Audit staff identified seven contributions from six individuals that appeared to exceed the contribution limits by \$28,500. Copies of the contributor checks for five of these contributions were not available to determine the proper attribution of the contribution. The Audit staff recommended that the RPA submit documentation to show that the contributions were not excessive or refund the excessive portion to the contributors.

Legal Standard

Party Committee Limits. A party committee may not receive more than a total of \$5,000 per year from any one contributor. 2 U.S.C. §441a(a)(1)(C) and 11 CFR §§110.1(a) and (d) and 110.9(a).

Handling Contributions That Appear Excessive. If a committee receives a contribution that appears to be excessive, the committee must either:

1. Return the questionable check to the donor; or
2. Deposit the check into its federal account and:
 - ♦ Keep enough money in the account to cover all potential refunds;
 - ♦ Keep a written record explaining why the contribution may be illegal;

⁸ The majority (\$1,146,623 paid directly from the non-federal account and \$282,561 of unreported disbursements) of the reporting errors occurred during the October Quarterly and 30 day Post-General reporting periods.

- ♦ Include this explanation on Schedule A if the contribution has to be itemized before its legality is established;
- ♦ Seek a *retribution* of the excessive portion, following the instructions provided in FEC regulations (see below for explanation of *retribution*); and
- ♦ If the committee does not receive a proper retribution within 60 days after receiving the excessive contribution, refund the excessive portion to the donor.

11 CFR §§103.3(b)(3), (4) and (5) and 110.1(k)(3)(ii)(B).

Joint Contributions. Any contribution made by more than one person (except for a contribution made by a partnership) must include the signature of each contributor on the check or in a separate writing. A joint contribution is attributed equally to each donor unless a statement indicates that the funds should be divided differently. 11 CFR §110.1(k)(1) and (2).

Retribution of Excessive Contributions. FEC regulations permit committees to ask donors of excessive contributions whether they had intended their contribution to be a joint contribution from more than one person and whether they would like to *retribute* the excess amount to the other contributor. The committee must inform the contributor that:

1. The retribution must be signed by both contributors;
2. The retribution must be received by the committee within 60 days after the committee received the original contribution; and
3. The contributor may instead request a refund of the excessive amount. 11 CFR §110.1(k)(3).

Within 60 days after receiving the excessive contribution, the committee must either receive the proper retribution or refund the excessive portion to the donor. 11 CFR §§103.3(b)(3) and 110.1(k)(3)(ii)(B). Further, a political committee must retain written records concerning the retribution in order for it to be effective. 11 CFR §110.1(l)(5).

Revised Regulations Applied. The Commission recently adopted new regulations that allow committees greater latitude to retribute contributions to joint account holders and has decided to apply these regulations to current matters. The Audit staff has evaluated the excessive contributions discussed below using the new regulations.

Federal v. Non-Federal Account. The federal account may contain only those funds that are permissible under the federal election law; the non-federal account may contain funds that are not permitted under the federal law (but are legal under state law), such as contributions that exceed the limits of the federal law and contributions from prohibited sources, such as corporations and labor organizations. 11 CFR §102.5(a)(1)(i) and (a)(3).

Facts and Analysis

The review of the RPA's receipts records identified seven contributions from six individuals that appeared to exceed the contributions limits by \$28,500. Without adequate supporting documentation (See Finding 3), the Audit staff was unable to determine the proper attribution for the majority of the contributions in question. For five of the contributions (totaling \$18,500), the only supporting documentation was a deposit ticket with a contributor's last name and amount listed. A portion of one contribution (\$5,000) was attributed to another individual by the RPA without evidence of obtaining the signature of

the second contributor. There was only one name (the individual who signed the check) imprinted on the face of the instrument. The RPA did not deposit the questionable contributions into a separate account nor, prior to July 2000, did it consistently maintain sufficient funds to refund these contributions.⁹

Interim Audit Report Recommendations

The Audit staff recommended that the RPA:

- Provide evidence demonstrating that the contributions in question were not excessive; or
- Refund \$28,500 and provide evidence of such refunds (copies of the front and back of the negotiated refund checks); and
- If funds were not available to make the necessary refunds, disclose the refunds due on Schedule D (Debts and Obligations) until funds become available to make the refunds.

Finding 3. Recordkeeping for Contributions Received

Summary

The RPA failed to maintain adequate records for contributions received from individuals. A sample review of contributions greater than \$200 from individuals indicated that approximately 12% were inadequately documented. The Audit staff recommended that the RPA obtain the missing records and provide a complete listing of its contributors, along with a narrative description of changes to be implemented to insure adequate contributor records are maintained.

Legal Standard

Recordkeeping Requirements for Receipts. Political committees must keep records of:

- All contributions received by or on behalf of the committee;
- The name and address of any person who makes a contribution in excess of \$50, together with the date and amount of the contribution; and
- The occupation and name of employer of any individual whose contributions aggregate more than \$200 during a calendar year, together with the date and amount of any such contributions. 2 U.S.C. §432(c).

Preserving Documents. Committees must preserve these records for 3 years after a report is filed. 2 U.S.C. §432(d).

Best Efforts Ensures Compliance

When the treasurer of a political committee shows that the committee used *best efforts* (see below) to obtain, maintain, and submit the information required by the Act, the committee's reports and records will be considered to be in compliance with the Act. 2 U.S.C. §432(h)(2)(i).

⁹ The Audit staff also considered the apparent prohibited contributions received by the RPA in determining if a sufficient balance was maintained to refund the questionable contributions.
(See Finding 5)

Definition of Best Efforts

The treasurer and the committee will be considered to have used "best efforts" if the committee satisfied **all** of the following criteria:

- All written solicitations for contributions included:
 - A clear request for the contributor's full name, mailing address, occupation, and name of employer; and
 - The statement that Federal law requires such reporting.
- Within 30 days after the receipt of the contribution, the treasurer made at least one effort to obtain the missing information, in either a written request or a documented oral request.
- The treasurer reported any contributor information that although not initially provided by the contributor, was obtained in a follow-up communication or was contained in the committee's records or in prior reports that the committee filed during the same two-year election cycle. 11 CFR §104.7(b).

Facts and Analysis

The RPA did not satisfy the recordkeeping requirements for a significant number of contributions received from individuals. The RPA provided the following records:

- A contributor database that was approximately 72% complete;
- Copies of deposit tickets that listed the deposited items by last name and amount; and
- Copies of contribution checks that were not associated with the deposit tickets and not annotated to indicate whether the deposit was for the federal or the non-federal account.¹⁰

Ninety-seven percent (97%) of the contributions on the database provided by the RPA were greater than \$200. The Audit staff compared the database with deposit items greater than \$200 listed on the deposit tickets to identify additional contributions and provide a representative contribution population for testing. A sample review of contributions greater than \$200 indicated that 12% were inadequately documented. For these contributions, the only record available was a deposit ticket listing the individual's last name and contribution amount.

Interim Audit Report Recommendations

The Audit staff recommended that the RPA:

- Obtain any contributor information not currently available in its records;
- Provide the Audit staff with a complete listing of its contributors; and
- Describe changes to be undertaken, including procedures to back-up electronic data, to avoid future problems with processing its receipts and retaining the necessary records.

¹⁰ In the Commission's audit of the RPA for the 1998 election cycle, the Audit staff found that 10% of the sample items reviewed were inadequately documented for the identical reasons note above. The RPA indicated that a computer "crash" had destroyed all of its donor records. The RPA was initially unable to provide a receipts database for 1999-2000 when requested by the Audit staff because computer problems resulted in the loss of data. Information for receipts had to be re-entered by the committee from available records.

Finding 4. Itemizing Contributions and Transfers Received

Summary

The RPA did not itemize 21% of the sample of contributions from individuals, eight contributions totaling \$30,050 from political committees, 16 transfers totaling \$269,721 from affiliated committees, and one transfer of \$50,000 from an authorized committee. The Audit staff recommended that the RPA file amended Schedules A (Itemized Receipts) disclosing the contributions and transfers not previously itemized.

Legal Standard

When to Itemize. Political committees must itemize:

- Any contribution from an individual if it exceeds \$200 per calendar year either by itself or when aggregated with other contributions from the same contributor;
- Every contribution from any political committee, regardless of the amount;
- Every transfer from an authorized committee, regardless of the amount; and
- Every transfer from an affiliated committee, regardless of the amount. 2 U.S.C. §434(b)(3)(A) thru (D).

Definition of Itemization. Itemization of contributions received means that the recipient committee discloses, on a separate schedule, the following information:

- The amount of the contribution;
- The date of receipt (the date the committee received the contribution);
- The full name and address of the contributor;
- The year-to-date total of all contributions from the same contributor; and
- In the case of contributions from individual contributors, the contributor's occupation and the name of his or her employer. 11 CFR §§100.12 and 104.3(a)(4)(i) thru (iii) and 2 U.S.C. §434(b)(3)(A) thru (D).

Facts and Analysis

The Audit staff reviewed a sample of contributions from individuals, all contributions from political committees, and all transfers from authorized and affiliated committees. The RPA did not itemize 21% of the sample of contributions from individuals, eight contributions totaling \$30,050 from political committees, 16 transfers totaling \$269,721 from affiliated committees, and one transfer of \$50,000 from an authorized committee. The RPA's itemization problems appear to be the result of inadequate recordkeeping. (See Finding 3). Of the contributions that should have been itemized on Schedule A, 78% of the sample contributions from individuals, eight of the nine contributions from political committees and 15 of the 16 transfers from affiliated committees were not recorded by the RPA in its contribution database.¹¹

Interim Audit Report Recommendations

The Audit staff recommended that the RPA include in the amended reports recommended herein, amended Schedules A disclosing the contributions and transfers not previously itemized.

¹¹ In the Commission's audit of the committee for the 1998 election cycle, the Audit staff found that the RPA did not itemize 16% of a sample of contributions from individuals and nine contributions (totaling \$36,625) from political committees.

Finding 5. Apparent Prohibited Contributions Received

Summary

The RPA deposited two contributions totaling \$11,500 from apparent prohibited sources into its federal account. Contributions from these sources are allowed under the elections laws of the State of Arkansas. The Audit staff recommended that the RPA submit documentation to show that the funds received were not from prohibited sources or refund the contributions.

Legal Standard

Receipt of Prohibited Corporate Contributions. Political campaigns may not accept contributions made from the general treasury funds of corporations. This prohibition applies to any type of corporation including a non-stock corporation, an incorporated membership organization, and an incorporated cooperative. 2 U.S.C. §441b.

Federal v. Non-Federal Account. The federal account may contain only those funds that are permissible under the federal election law; the non-federal account may contain funds that are not permitted under the federal law (but are legal under state law), such as contributions that exceed the limits of the federal law and contributions from prohibited sources, such as corporations and labor organizations. 11 CFR §102.5(a)(1)(i) and (a)(3).

Questionable Contributions. If a committee receives a contribution that appears to be prohibited (a questionable contribution), it must follow the procedures below:

1. Within 10 days after the treasurer receives the questionable contribution, the committee must either:
 - Return the contribution to the contributor without depositing it; or
 - Deposit the contribution (and follow the steps below). 11 CFR §103.3(b)(1).
2. If the committee deposits the questionable contribution, it may not spend the funds and must be prepared to refund them. It must therefore maintain sufficient funds to make the refunds or establish a separate account in a campaign depository for possibly illegal contributions. 11 CFR §103.3(b)(4).
3. The committee must keep a written record explaining why the contribution may be prohibited and must include this information when reporting the receipt of the contribution. 11 CFR §103.3(b)(5).
4. Within 30 days of the treasurer's receipt of the questionable contribution, the committee must make at least one written or oral request for evidence that the contribution is legal. Evidence of legality includes, for example, a written statement from the contributor explaining why the contribution is legal or an oral explanation that is recorded by the committee in a memorandum. 11 CFR §103.3(b)(1).
5. Within these 30 days, the committee must either:
 - Confirm the legality of the contribution; or
 - Refund the contribution to the contributor and note the refund on the report covering the period in which the refund was made. 11 CFR §103.3(b)(1).

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Facts and Analysis

On November 17, 1999, the RPA deposited a transfer of \$6,500 from the National Republican Congressional Committee (NRCC) into its federal account. A copy of the deposit item was not available. The Schedule B (Itemized Disbursements – Non-Federal Memo Entry) filed by the NRCC reports the disbursement as a transfer of non-federal funds.

Also, the RPA deposited a contribution of \$5,000 from the Potlatch Corporation into its federal account on March 31, 2000. The check appears to be drawn on a corporate account.¹² A review of the April 2000 quarterly report filed by the Potlatch Employees Political Fund (a registered political committee) does not list a contribution to the RPA.

The RPA did not deposit these questionable funds into a separate account nor, prior to July 2000, did it consistently maintain sufficient funds to refund the transfer or the contribution.

Interim Audit Report Recommendations

The Audit staff recommended that the RPA:

- Provide evidence that these funds were not from prohibited sources; or
- Refund \$11,500 and provide evidence of such refunds (copies of the front and back of the negotiated refund checks); and
- If funds were not available to make the necessary refunds, disclose the refunds due on Schedule D (Debts and Obligations) until funds become available to make the refunds.

Finding 6. Disclosure of Transfers Received from Affiliates

Summary

Disclosure errors occurred in 63% of the transfers from affiliates reported by the RPA. The year-to-date totals were missing for all but one, and a significant number were reported on the incorrect Detailed Summary Page line. The Audit staff recommended that the RPA file amended Schedules A to correct these errors.

Legal Standard

Itemization Required for Transfers from Affiliated Committees. A political committee must itemize any transfer from an affiliate committee, regardless of the amount. 2 U.S.C. §434(b)(3)(D).

Required Information for Transfers from Affiliated Committees. For each itemized transfer from an affiliate committee, the committee must provide the following information:

- The affiliate's full name and address;
- The date of receipt (the date the committee received the transfer);
- The amount of the transfer; and
- The year-to-date total of all transfers from the same committee. 11 CFR §§100.12 and 104.3(a)(4)(iii)(B) and 2 U.S.C. §434(b)(3)(D).

¹² The records of the Idaho Secretary of State indicate that the Potlatch Corporation is a registered corporation in good standing.

Facts and Analysis

The review of transfers from affiliated committees identified 18 transfers totaling \$339,140 (63%) that were disclosed improperly. The RPA failed to disclose the aggregate year-to-date (AYTD) totals for 17 transfers totaling \$332,640. In addition, 12 of the transfers (\$204,398) were reported on the wrong line of the FEC Form 3, Detailed Summary Page.

Interim Audit Report Recommendation

The Audit staff recommended that the RPA include with the amended reports recommended herein, amended Schedules A to correct its disclosure of transfers from affiliated committees.

Finding 7. Recordkeeping and Disclosure of Disbursements

Summary

The RPA failed to maintain adequate records and properly disclose the required information for disbursements. A sample review of disbursements indicated that approximately 15% were inadequately documented and 13% were not properly disclosed. The majority of disclosure problems involved missing or inadequate purposes and missing or incomplete addresses for the payee. The Audit staff recommended that the RPA obtain the missing records, provide a complete listing of disbursements, provide a narrative description of changes to be implemented to insure adequate disbursement records are maintained, and file amended Schedules B (Itemized Disbursements) and H-4 (Joint Federal/Non-Federal Activity) to correct the disclosure errors.

Legal Standard

Required Records for Disbursements. For each disbursement, the treasurer of a political committee must keep records on the:

- Amount of the disbursement;
- Date when the disbursement was made;
- Name and address of the payee;¹³
- *Purpose* (a brief description of why the disbursement was made—see below); and
- If the disbursement was made on behalf of a candidate, the candidate's name and the office sought by the candidate. 2 U.S.C. §432(c)(5) and 11 CFR §102.9(b).

Required Supporting Evidence. If the disbursement is in excess of \$200, the records must include a receipt or invoice from the payee, or a cancelled check or share draft to the payee. If the disbursement was by credit card, the record must include the monthly statement or customer receipt and the cancelled check used to pay the credit card bill. 2 U.S.C. §432(c)(5), 11 CFR §102.9(b), and 11 CFR §104.3(b)(4)(i)(A).

Reporting Operating Expenditures. When operating expenditures to the same person exceed \$200 in a calendar year, the committee must report the:

- Amount of the disbursement;
- Date when the disbursement was made;

¹³ The payee is usually the person providing the goods or services to the committee. In the case of travel advances, however, the payee is the person receiving the advance. 11 CFR §102.9(b)(2).

- Name and address of the payee; and
- *Purpose* (a brief description of why the disbursement was made—see above). 2 U.S.C. §434(b)(5)(A) and 11 CFR §§104.3(b)(3) and 104.9.

Examples of Purpose

- *Adequate Descriptions.* Examples of adequate descriptions of “purpose” include the following: dinner expenses, media, salary, polling, travel, party fees, phone banks, travel expenses, travel expense reimbursement, catering costs, loan repayment, or contribution refund. 11 CFR §104.3(b)(3)(i)(B).
- *Inadequate Descriptions.* The following descriptions do not meet the requirement for reporting “purpose”: advance, election day expenses, other expenses, expense reimbursement, miscellaneous, outside services, get-out-the-vote, and voter registration. 11 CFR §104.3(b)(3)(i)(B).

Preserving Records and Copies of Reports. The treasurer of a political committee must preserve all records and copies of reports for 3 years after the report is filed. 2 U.S.C. §432(d).

Facts and Analysis

The RPA did not satisfy the recordkeeping and reporting requirements for a significant number of disbursements. The RPA provided the following records:

- A disbursement database that was approximately 91% complete;
- Bank statements and cancelled checks; and
- Vendor invoices.

A sample review of operating expenditures indicated that 15% of the disbursements were inadequately documented. Using the bank records provided by the RPA, the Audit staff compared the disbursement database to bank records. The RPA’s database listed only the payee’s name, date and amount of the disbursement; no address or purpose was provided although the accounting software used allows that information to be recorded. The majority of cancelled checks did not provide an address for the payee and the purpose of the expenditure was not consistently listed. Copies of vendor invoices were not maintained for most disbursements.

The sample review also indicated that 13% of the disbursements were disclosed improperly. Disclosure errors were comprised of the following:

- Missing or inadequate purpose description – 53%
- Missing or incorrect address listed – 42%
- Missing or incorrect name listed – 3%
- Missing memo entries to disclose actual vendor providing goods or services charged on credit card – 2%

Interim Audit Report Recommendations

The Audit staff recommended that the RPA:

- Obtain any disbursement information not currently available in its records;
- Provide the Audit staff with a complete listing of disbursements;

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- Describe changes to be undertaken to ensure adequate payee records are maintained; and
- Include with the amended reports recommended herein, amended Schedules B and H-4 to correct the disclosure errors.

Finding 8. Allocation of Federal and Non-Federal Expenses

Summary

A. Underpayment of Federal Share of Allocable Expenses. The RPA maintained an allocation account to pay for shared federal/non-federal expenses. However, it also made payments for allocable expenses from its federal and non-federal accounts. The Audit staff reviewed disbursements (classified as shared expenses by the RPA) totaling \$4,496,770 and determined that the RPA may have underpaid its federal share by \$1,576,104. Records are inadequate to determine the proper allocation of disbursements totaling \$2,093,763 that, as a result, are considered potentially 100% federal. Also, the RPA used an incorrect ballot composition ratio to determine the federal share of administrative and get-out-the-vote expenses.

The Audit staff recommended that the RPA provide additional documentation to show that the disbursements currently classified as potentially 100% federal by the Audit staff are allocable expenses and reimburse the non-federal account for the amount of the underpayment of the federal share.

B. Use of Non-Federal Funds to Pay for 100% Federal and Allocable Expenses. The review of disbursements from the non-federal account identified payments totaling \$234,608 that appeared to be for potentially 100% federal or shared federal/non-federal activity. The potential federal share of these payments totaled \$136,037. The Audit staff recommended that the RPA provide additional documentation to show that these payments were not made for potentially 100% federal or shared activity, or reimburse the non-federal account and file memo Schedules B and H-4 to disclose these disbursements.

Legal Standard

Accounts for Federal and Non-Federal Activity. A party committee that finances political activity in connection with both federal and non-federal elections must establish two accounts (federal and non-federal) and allocate shared expenses—those that simultaneously support federal and non-federal election activity—between the two accounts. Alternatively, the committee may conduct both federal and non-federal activity from one bank account, considered a federal account. 11 CFR §102.5(a)(1)(i).

Federal v. Non-Federal Account. The federal account may contain only those funds that are permissible under the federal election law; the non-federal account may contain funds that are not permitted under the federal law (but are legal under state law), such as contributions that exceed the limits of the federal law and contributions from prohibited sources, such as corporations and labor organizations. 11 CFR §102.5(a)(1)(i) and (a)(3).

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Transfers. Generally, a political committee may not transfer funds from its non-federal account to its federal account, except when the committee follows specific rules for paying for shared federal/non-federal election activity. 11 CFR §§102.5(a)(1)(i) and 106.5(g).

Paying for Allocable Expenses. FEC regulations offer party committees two ways to pay for allocable, shared federal/non-federal expenses.

- They may pay the entire amount of the shared expense from the federal account and transfer funds from the non-federal account to the federal account to cover the non-federal share of that expense; or
- They may establish a separate, federal allocation account into which the committee deposits funds from both its federal and non-federal accounts solely for the purpose of paying the allocable expenses of shared federal/non-federal activities. 11 CFR §106.5(g)(1)(i) and (ii)(A).

Reporting Allocable Expenses. A political committee that allocates federal/non-federal expenses must report each disbursement it makes from its federal account (or separate allocation account) to pay for a shared federal/non-federal expense. Committees report these kinds of disbursements on Schedule H-4 (Joint Federal/Non-Federal Activity). 11 CFR §104.10(b)(4).

Allocation Required for Generic Voter Drives. State and local party committees must allocate all of their costs for generic voter drives. A generic voter drive is an activity that urges the general public:

- To register to vote;
- To vote; or
- To support candidates of a particular party or candidates who are associated with a particular issue, without mentioning a specific candidate. 11 CFR §106.5(a)(2)(iv).

Allocation Ratio for Administrative & Generic Voter Drive Costs. State and local party committees must allocate their administrative expenses and generic voter drive costs according to the ballot composition method. Under this method, a committee determines the ratio of federal offices to the total number of federal and non-federal offices expected on the ballot in the next general election in the state or geographic area. 11 CFR §106.5(d)(1) and (2).

Allocation Ratio for Shared Fundraising Expenses. If a committee raises both federal and non-federal funds through the same fundraising program or event, it must allocate the direct cost of the fundraising event based upon the ratio of funds received by the federal account to the total amount raised for the event. 11 CFR §106.5(f)(1).

Required Records for Reports and Statements. The treasurer of a political committee will maintain records, including bank records, vouchers, worksheets, receipts and bills, in sufficient detail to verify the accuracy and completeness of the information contained in the reports. 11 CFR §104.14(b)(1).

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A. Underpayment of Federal Share of Allocable Expenses

Facts and Analysis

In addition to its separate federal and non-federal accounts, the RPA maintained a separate federal allocation account to pay shared federal/non-federal expenses. Also, the RPA established separate federal and non-federal accounts to pay for Victory 2000 coordinated campaign activity. Despite having an allocation account, the RPA made payments for shared activity directly from the federal and non-federal accounts. The Audit staff reviewed disbursements (classified as shared expenses by the RPA) totaling \$4,496,770 and determined that the RPA may have underpaid the federal share by \$1,576,104.

Lack of Supporting Documentation

When calculating the federal and non-federal shares of the allocable expenses, the Audit staff included disbursements totaling \$2,093,763 as potentially 100% federal because additional supporting documentation is needed to determine if the activity is an allocable expense. The purposes for these disbursements are summarized below:

<u>Purpose</u>	<u>Amount</u>
Media	\$ 1,323,482
Direct Mail	667,688
Event Production	80,440
Travel – Republican National Convention	5,561
Other – Miscellaneous	<u>16,592</u>
Total	\$ 2,093,763

The majority of these disbursements [\$1,790,852 (86%)] were made to two vendors. Disbursements totaling \$1,282,937 were made to Strategic Media Services for media buys and \$507,915 to Olsen, Delisi & Shuvalov for direct mail.

Copies of videotapes, scripts or storyboards for all commercials aired on behalf of the RPA, along with records of the media placements and broadcast times of all commercials, must be reviewed to determine the proper allocation of the media buys. Copies of the mail pieces for direct mail are required to determine the allocation of these expenses. The RPA stated that none of these materials were in its possession.

The vendors named above were contacted and asked to provide the supporting documentation. In response, Olsen, Delisi & Shuvalov (ODS) provided copies of invoices that identified the direct mailer, i.e. "Arkansas GOTV Self Mailer," "Arkansas 2nd Seniors Self Mailer," and "Compare and Contrast Self Mailer," and the number of pieces mailed but examples of the mailers were not provided. Strategic Media Services (SMS) provided a reconciliation of the payments received from the RPA and payments made to the media outlets for the commercials that aired. SMS stated that they did not have videotapes of the commercials in their possession. Records of the broadcast times and the identity of the commercials being aired (station affidavits) were not provided.

Allocation Ratio

Also, the ballot composition ratio used by the RPA to allocate its administrative and generic voter drive expenses understated the federal percentage by 8% (25% vs. 33%). The RPA included two non-federal points that it was not entitled to when calculating the ratio. This

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understatement, and the lack of documentation noted above, caused the RPA to underpay the federal portion of its shared federal/non-federal activity.

The underpayment was determined as follows:

Allocation of Shared Expenses per Audit staff			
	Total Reviewed	Federal Share	Non-federal Share
Allocation accounts	\$ 868,964	\$ 364,190	\$ 504,774
Federal and non-federal accounts	2,625,833	1,810,458	815,375
Victory 2000 federal and non-federal accounts	<u>1,001,973</u>	<u>757,339</u>	<u>244,634</u>
Totals	\$ 4,496,770	\$ 2,931,987	\$ 1,564,783
Amount paid by non-federal accounts ¹⁴			\$ 3,140,887
Less: Non-federal share as determined by Audit staff above			<u>1,564,783</u>
Federal Share Paid By Non-Federal Accounts			\$ 1,576,104

Interim Audit Report Recommendations

The Audit staff recommended that the RPA:

- Provide supporting documentation, to include copies of videotapes, scripts or storyboards, station affidavits, mail pieces, contracts and invoices to show that the disbursements classified above as potentially 100% federal by the Audit staff were allocable expenses; or
- Reimburse the non-federal account \$1,576,104 (or a lesser amount as determined after the review of any additional documentation submitted) for the underpayment of the federal share of allocable expenses and provide evidence of the reimbursement (copies of the front and back of the negotiated instruments); and
- If funds were not available to make the necessary reimbursement, disclose the debt to the non-federal account on Schedule D (Debts and Obligations) until funds become available to make the reimbursement.

B. Use of Non-Federal Funds to Pay for 100% Federal and Allocable Expenses

Facts and Analysis

The Audit staff reviewed disbursements made from the non-federal account and identified \$335,108 in payments to vendors for potentially 100% federal or shared activity. See Attachment 1 for detailed purpose descriptions. The largest categories of disbursements included direct payments to local county Republican committees (\$100,500), phone banks (\$80,025), and media buyers (\$61,000). Documentation such as descriptions of activities to be undertaken by the local committees, phone bank scripts, and videotapes (or scripts/storyboards) of the commercials were not provided in support of these payments.

¹⁴ Includes \$449,900 transferred from the non-federal account to the allocation account and \$2,690,987 paid to vendors directly from the non-federal accounts.

Lacking documentation to support these payments as wholly non-federal activity, the Audit staff has determined that \$169,202 represents the potential federal share of these disbursements (\$88,364 for 100% federal activity and \$80,838 for the federal share of allocable expenses).

The Commission considered the Audit staff's analysis and determined that the payments to local county Republican committees (\$100,500) should be viewed as transfers between party committees. Absent any evidence to the contrary, the local committee is responsible for the expenditure of the funds. As result of the Commission's determination, the potential federal share has been reduced by \$33,165 ($\$100,500 \times 33\%$) to \$136,037 (\$88,364 for 100% federal activity and \$47,673 for the federal share of allocable expenses).

Interim Audit Report Recommendations

The Audit staff recommended that the RPA:

- Provide supporting documentation, to include copies of videotapes, scripts or storyboards, station affidavits, phone bank scripts, mail pieces, contracts and invoices to show that the disbursements were not made for potentially 100% federal or shared expenses; or
- Reimburse the non-federal account \$136,037 (or a lesser amount as determined after the review of any additional documentation submitted) for the underpayment of the federal activity and provide evidence of the reimbursement (copies of the front and back of the negotiated instruments);
- Include with the amended reports recommended herein, memo Schedules B (Itemized Disbursements) and H-4 (Joint Federal/Non-Federal Activity) to disclose these payments; and
- If funds were not available to make the necessary reimbursement, disclose the debt to the non-federal account on Schedule D (Debts and Obligations) until funds become available to make the reimbursement.

Finding 9. Excessive Disbursements in Support of a Federal Candidate

Summary

The RPA made disbursements totaling \$339,581 in support of a federal candidate, including contributions to the candidate and payments to vendors for consulting services and media placements. The limitations were exceeded by \$331,021. The Audit staff recommended that the RPA submit documentation to show that the payments made in support of the federal candidate were not excessive contributions or request a refund from the candidate.

Legal Standard

Limits on Contributions Made by State and Local Party Committees. State and local party committees may not contribute more than \$5,000 per election to any candidate for a Federal office. 2 U.S.C. §441a(a)(2)(A).

Coordinated Party Expenditures. National party committees and state party committees are permitted to purchase goods and services on behalf of candidates in the general

election—over and above the contributions that are subject to contribution limits described above. 2 U.S.C. §441a(d) and 11 CFR §110.7(b)(1). Such purchases are referred to as “coordinated party expenditures.” They are subject to the following rules:

- The amount spent on “coordinated party expenditures” is limited by statutory formulas that are based on the Cost of Living Adjustment (COLA) and the voting age population.
- Party committees are permitted to coordinate the spending with the candidate committees.
- The parties may make these expenditures only in connection with the general election.
- The party committees—not the candidates—are responsible for reporting these expenditures.
- If the party committee exceeds the limits on coordinated party expenditures, the excess amount is considered an in-kind contribution, subject to the contribution limits described above.

Independent Expenditures. The term “*independent expenditure*” means a payment made for goods and services that expressly advocates the election or defeat of a clearly identified candidate without the cooperation or consultation of the candidate. 2 U.S.C. §431(17).

Facts and Analysis

The coordinated party expenditure limitation in the 2000 election cycle for congressional nominees in Arkansas was \$33,780 each for the state and national party, or a combined total of \$67,560. The National Republican Congressional Committee (NRCC) disclosed coordinated expenditures of \$66,000 on behalf of Jay Dickey to Creative Media Planning for media placement.¹⁵ The RPA did not disclose any coordinated expenditures on behalf of the candidate. The remaining coordinated party expenditure limitation is \$1,560 (\$67,560 less \$66,000).

The RPA made disbursements totaling \$339,581 from the federal (\$92,395) and non-federal accounts (\$247,186) in support of Jay Dickey, a candidate for the House of Representatives (AR District 04). The following payments were made:

<u>Payee</u>	<u>Date</u>	<u>Amount</u>	<u>Purpose</u>
Jay Dickey for Congress	08-01-2000	\$ 1,000	Contribution
Jay Dickey for Congress	10-05-2000	4,000	Contribution
Strategic Media Services	10-25-2000	39,844	Media Placement
Strategic Media Services	10-25-2000	119,531 ¹⁶	Media Placement
Bob Freeman Consulting	10-27-2000	5,000	Consulting
Strategic Media Services	11-03-2000	42,551	Media Placement
Strategic Media Services	11-03-2000	127,655 ¹⁶	Media Placement
	Total	\$ 339,581	

For the payments from the federal account to Strategic Media Services, the disclosed purpose on Schedule B (Itemized Disbursements) was “*Jay Dickey Media*” and the purpose disclosed for the payment to Bob Freeman Consulting was “*Consulting for Jay Dickey*”. None of the payments were disclosed as independent expenditures. Additional

¹⁵ The RPA assigned its spending limit (\$33,780) to the NRCC by written agreement dated October 3, 2000.

¹⁶ Payments made from non-federal account.

documentation, such as copies of the videotapes or scripts for the commercials aired and a consulting agreement outlining the services rendered, was not provided to support the payments. Without such documentation, it is not possible to determine if some or all of these payments are allocable expenses or independent expenditures.

The Audit staff's calculation of the excessive portion of the disbursements in support of Jay Dickey is as follows:

Total payments made in support of candidate		\$ 339,581
Less: Allowable contributions	\$ 5,000	
Remaining §441a(d) limit	<u>1,560</u>	<u>- 6,560</u>
Excessive Amount		<u>\$ 333,021</u>

Interim Audit Report Recommendations

The Audit staff recommended that the RPA:

- Provide supporting documentation to show that the payments to vendors disclosed as on behalf of Jay Dickey were not direct candidate support;
- If these disbursements were independent expenditures:
 - Include with the amended reports recommended herein, amended Schedules H-4 and E (Independent Expenditures) to report the independent expenditures and certify that they were not made in coordination with the candidate;
 - Reimburse the non-federal account \$247,186, the sum of the amounts paid to vendors from the non-federal account¹⁷, and provide evidence of the reimbursement (copies of the front and back of the negotiated instruments);
 - If funds were not available to make the necessary reimbursement, disclose the amount owed on Schedule D (Debts and Obligations) as a debt until funds become available to make the reimbursement; or
- If these disbursements were coordinated expenditures:
 - Include with the amended reports recommended herein amended Schedules H-4 and F (Coordinated Expenditures) to report the disbursements;
 - Reimburse the non-federal account \$247,186, the sum of the amounts paid to vendors from the non-federal account¹⁸, and provide evidence of the reimbursement (copies of the front and back of the negotiated instruments);
 - If funds were not available to make the necessary reimbursement, disclose the amount owed on Schedule D (Debts and Obligations) as a debt until funds become available to make the reimbursement; and
- Provide evidence that the disbursements (totaling \$331,021 or a lesser amount as determined after the review of any additional documentation submitted) were not excessive or request a reimbursement from the candidate committee.

¹⁷ These expenditures are also included in Finding 8A. After review of any documentation submitted in support of these payments, the Audit staff will make the necessary adjustment to the appropriate finding.

¹⁸ See Footnote 17.

Finding 10. Itemizing Outstanding Debts and Obligations

Summary

The RPA failed to itemize outstanding debts totaling \$25,332 to eight vendors on its year-end 2000 disclosure reports. The debts were related to the Victory 2000 Coordinated Campaign. The Audit staff recommended that the RPA file an amended Schedule D (Debts and Obligations) and Summary Page for year-end 2000 to disclose the debts.

Legal Standard

Continuous Reporting Required. A political committee must disclose the amount and nature of outstanding debts and obligations until those debts are extinguished. 2 U.S.C. §434(b)(8) and 11 CFR §§104.3(d) and 104.11(a).

Separate Schedules. A political committee must file separate schedules for debts owed by the committee and debts owed to the committee, together with a statement explaining the circumstances and conditions under which each debt and obligation was incurred or extinguished. 11 CFR §104.11(a).

Itemizing Debts and Obligations

- A debt of \$500 or less must be reported once it has been outstanding 60 days from the date incurred (the date of the transaction); the committee reports it on the next regularly scheduled report.
- A debt exceeding \$500 must be disclosed in the report that covers the date on which the debt was incurred. 11 CFR §104.11(b).

Facts and Analysis

The Audit staff reviewed disbursement records for the Victory 2000 Coordinated Campaign. The review was limited to Victory 2000 because of a lack of adequate disbursement records for other payments (see Finding 7). The RPA failed to properly disclose debts totaling \$25,332 to eight vendors that were outstanding on December 31, 2000. The unreported debt was 18% of the reportable debt.¹⁹

Interim Audit Report Recommendation

The Audit staff recommended that the RPA include with the amended reports recommended herein amended Schedules D and Summary Page for the year-end 2000 report to disclose the outstanding debts.

¹⁹ Reportable debt was determined by adding the total debt reported by the RPA for each reporting period to the unreported debt identified above.

Finding 11. Disclosure of Bank Depositories

Summary

The RPA failed to file an amendment to its Statement of Organization disclosing the depositories in use during the audit period. The Audit staff recommended that the committee file an amendment to its Statement of Organization to disclose the current depositories.

Legal Standard

A political committee must file a Statement of Organization that lists all banks, safe deposit boxes or other depositories used by the committee. An amendment has to be filed within 10 days to report any change or correction to the information previously on file. 11 CFR §102.2(a)(1)(vi) and (2).

Facts and Analysis

The RPA failed to file the required amendment to its Statement of Organization to list the three banks in use during the audit period. The last amendment listing a change in depositories was filed on December 17, 1990.

Interim Audit Report Recommendation

The Audit staff recommended that the RPA file an amendment to its Statement of Organization to list all depositories currently in use.

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Republican Party of Arkansas
Attachment 1 – Finding 8

<u>Summary of Potentially Shared or 100% Federal Activity</u> <u>Classified as Non-Federal Expenses by RPA</u>			
<u>Purpose</u>	<u>Total Amount</u>	<u>Fed Share of Alloc Expenses</u>	<u>100% Federal</u>
Administrative	\$ 29,376	\$ 9,694	
Payments to: staff for bonuses and expense reimbursements; State of Arkansas and Regions Bank for payroll taxes; vendors for office supplies, copying and printing; and Nixon Law Firm for legal services. Similar payments were made to these payees from the federal and/or allocation accounts.			
Consulting Services	28,000	9,240	
Payments to consultants who also received payments for services from the federal account.			
Fundraising	7,345	1,836	
Payments for fundraising expenses for Governor's Appreciation Dinner listed on Schedule H-2 (Allocation Ratios) with a 25% federal component.			
Media	61,000		61,000
Payment to John Hudgen's Advertising for placement of television ads; no further details provided. This payment was made on October 23, 2000, just prior to the general election.			
Payment to Federal Candidate	1,000		1,000
Payment to Tim Hutchinson for Senate.			
Phone Banks	80,025	26,408	
Payments to Olympia for phone bank services; the stated purposes on two of the canceled checks were "GOTV Calls" and "Calls." The memo line on the remaining canceled check was blank. The costs of generic voter drives must be allocated pursuant to 11 CFR §106.5.			
Travel – Republican National Convention	<u>27,862</u>	<u>494</u>	<u>26,364</u>
Payments for delegate air travel and hotel accommodations. Also, payments for hospitality suite supplies, delegation caucus room and photos. The main purpose of the national convention is the nomination of the party's presidential and vice-presidential candidates.			
Totals	\$ 234,608	\$ 47,673	\$ 88,364

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